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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219077
Party	Plaintiff Tristar Products, Inc.
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Date	12/03/2015
Attachments	Request for Approval of Stipulated Protective Order.pdf(1440865 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Tristar Products, Inc.

Opposer,

v.

Telebrands Corp.,

Applicant.

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Opposition No. 91219077

REQUEST FOR APPROVAL OF STIPULATED PROTECTIVE ORDER

The parties to the above-referenced opposition proceeding entered into a Stipulated Protective Order in a form similar to the Standard Protective Order as offered by the Trademark Trial and Appeal Board.

We hereby request that the Board approve this agreement by signing the last page of the attached order, signed by both parties.

/cheryl a. clarkin/

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December 3, 2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Tristar Products, Inc.,)	Opposition No. 91219077
)	
Opposer,)	Application Serial No.
)	86/232781
v.)	
)	
Telebrands Corp.,)	
)	
Applicant.)	

STIPULATED PROTECTIVE ORDER

Pursuant to the stipulation and agreement by and between parties, by their undersigned attorneys, the terms and conditions of this Stipulated Protective Order shall govern the handling of all information in whatever form exchanged by the parties to this action, it is hereby ORDERED as follows:

1. This Order shall apply to and govern the handling of all documents, answers to interrogatories, responses to requests for admission, deposition testimony, exhibits, affidavits, briefs, reports and all other information, including all copies, transcripts, excerpts, compilations, abstracts and summaries thereof (collectively "Material") disclosed by any party or a third party in connection with discovery or otherwise in the above-captioned action (the "Action").

2. Any party to this action or third-party may designate as "CONFIDENTIAL" any Material it produces, discloses, or files during or in the course of discovery or other proceedings in this Action which it (the "Producing Party") in good faith believes contains sensitive commercial, financial, or business information that is not publicly known or that the producing party would not normally reveal to third parties or would require third parties to maintain in

confidence; and may designate as "ATTORNEY'S EYES ONLY" any such material that it deems extraordinarily sensitive, including but not limited to documents relating to trade secrets or other proprietary business, financial or personal information, its current and future business plans, and the way it does business. The Material so designated shall also render as CONFIDENTIAL or ATTORNEY'S EYES ONLY, as applicable, any copies, excerpts, summaries or other disclosure of the substance or contents of such Material.

3. CONFIDENTIAL or ATTORNEY'S EYES ONLY Material shall be used by the recipient thereof only for purposes of this Action (including appeals) and not for any business, commercial or competitive purpose, or any other purpose whatsoever, and shall not be disclosed, made available or communicated in any way to any persons or entities other than as provided in paragraphs 4 and 5 below.

4. CONFIDENTIAL material may, for purposes of this Action, be disclosed only to the following:

- (a) Officers or employees of the parties;
- (b) Any attorneys working on this Action on behalf of any party, including counsel not of record and in-house counsel of such company, and any paralegals, electronic discovery assistants, stenographic and clerical employees of such counsel assisting them with this Action;
- (c) Expert witnesses, consultants (including independent experts), and investigators, including the employees of such experts, consultants, or investigators, who are employed, retained, or otherwise consulted by counsel or a party for the purpose of analyzing data, conducting studies, or providing opinions to assist, in any way, in this matter. Access to

confidential material shall be limited to what is reasonably required in the role of expert, consultant, and investigator, provided that prior to disclosure, such persons sign a confidentiality undertaking in the form attached hereto as Exhibit A. Nothing herein shall require disclosure of such acknowledgments or of the name of the expert to the party producing the CONFIDENTIAL Material unless such expert is used for purposes of trial;

- (d) Clerical personnel and legal assistants employed by the persons listed in subparagraphs (b) and (c) above;
- (e) Outside photocopy, imaging, database, graphics, e-discovery and design services retained by the persons listed in (b) above, to the extent necessary to assist such counsel in this litigation;
- (f) Court reporters and videographers employed in connection with this Action; and
- (g) The Trademark Trial and Appeal Board ("Board") and its personnel.

5. Information designated as ATTORNEY'S EYES ONLY Material may be disclosed only to the following persons:

- (a) Only outside counsel of record for the parties in this action, including partners, associates, and other employees of outside litigation counsel in this action who have a legitimate need to see such documents for the purposes of this action, excluding any employees, officers, shareholders, in-house counsel and directors of any party or competitor of any party;

- (b) Expert witnesses, consultants, investigators, including the employees of such experts, consultants, or investigators, who are employed, retained or otherwise consulted by counsel or a party for the purpose of analyzing data, conducting studies, or providing opinions to assist, in any way, in this matter if counsel for the party in good faith believe such disclosure is necessary to prepare for litigation, and the expert, consultant, or investigator, or any such employee, signs a confidentiality undertaking in the form attached hereto as Exhibit A. Nothing herein shall require disclosure of such acknowledgments or of the name of the expert to the party producing the ATTORNEY'S EYES ONLY Material unless such expert is used for purposes of trial;
- (c) Clerical personnel and legal assistants employed by the persons listed in subparagraph (a) and (b) above;
- (d) Employees of the Producing Party who produced the Material and who are entitled to see the information as part of the scope of their employment duties, as well as the supervisors of such employees, and those individuals reflected as having seen or authored the Material
- (e) Outside photocopy, imaging, database, graphics, e-discovery and design services retained by the persons listed in subparagraph (a) above, to the extent necessary to assist such counsel in this litigation;
- (f) Court reporters and videographers employed in connection with this Action; and
- (g) The Board and its personnel.

6. Signed copies of all confidentiality undertakings executed pursuant to any provision of this Order shall be maintained by counsel for each party who obtained those undertakings.

7. This Order shall not preclude counsel for the parties from using any documents, information or materials which have been designated as CONFIDENTIAL or ATTORNEY'S EYES ONLY during any deposition in the Action in accordance with the terms hereof, including the limitations set forth in Paragraphs 4 and 5.

8. If depositions in this action involve Material or other information designed as CONFIDENTIAL, the portions of such depositions involving such Material or other information shall be taken with no one present during those portions of the examination relating in any way to such Material or other information except the deponent and the persons, attorneys, or experts permitted access pursuant to Paragraph 4, above, and the court reporter. If depositions in this action involve Material or other information designed as ATTORNEY'S EYES ONLY, the portions of such depositions involving such Material or other information shall be taken with no one present during those portions of the examination relating in any way to such Material or other information except the deponent and the persons, attorneys, or experts permitted access pursuant to Paragraph 5, above, and the court reporter.

9. The parties shall designate CONFIDENTIAL or ATTORNEY'S EYES ONLY Material as follows:

- (a) In the case of documents, interrogatory responses, and responses to requests for admission, the Producing Party shall make designations by placing an appropriate legend or designation on each page of any such document prior to production.

- (b) In the case of depositions, designation of any portions of the transcript (including exhibits) shall be made either orally at the deposition or by giving written notice of such designation within thirty (30) business days, via email, facsimile, or overnight Federal Express, after the designating party receives a copy of the transcript. During the period of time between the taking of the deposition and the end of the thirty business day period referred to above, all transcripts, exhibits and the information contained therein shall be deemed to be ATTORNEY'S EYES ONLY in their entirety under the terms of this Order. If the designation is made during the deposition, the court reporter recording such deposition shall bind the transcript in separate portions containing the non-confidential, CONFIDENTIAL, and ATTORNEY'S EYES ONLY material, and the reporter shall place an appropriate legend on the cover of each portion of the transcript. If the designation is made during the thirty business days period referred to above, the non-confidential portions of such depositions shall be segregated from the other portions of the transcripts and an appropriate legend shall be placed on the cover of each portion of the transcript.

10. No party shall seek to introduce or file CONFIDENTIAL or ATTORNEY'S EYES ONLY Material, or any documents containing such Material or confidential information contained within such Material, in the public record of the this Action without requesting that such material be treated in accordance with the terms of this Protective Order.

When a party or attorney must file CONFIDENTIAL or ATTORNEY'S EYES ONLY Material with the Board, or a brief that discusses such information, the CONFIDENTIAL or ATTORNEY'S EYES ONLY Material or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected. Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

CONFIDENTIAL or ATTORNEY'S EYES ONLY Material, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

11. A party may designate any materials produced or given by any third party to the Action, or any portion thereof, as CONFIDENTIAL or ATTORNEY'S EYES ONLY Material subject to this protective order. Such designation shall be made by notifying all counsel in writing of such materials which are to be designated and treated as such within thirty (30) business days after actual receipt of copies of such materials by counsel for the party asserting confidentiality thereof. All documents, information, or materials produced by a third party to the Action shall be treated as ATTORNEY'S EYES ONLY under this protective order pending such notice of designation by a Party or the expiration of the aforesaid thirty-business-day period or agreement of the parties to the contrary.

12. A party may also designate material produced by itself or another party as CONFIDENTIAL or ATTORNEY'S EYES ONLY subsequent to production. However, said designation after the initial production of material (other than in a case of depositions), shall have no *ex post facto* effect and the parties who received material not designated as CONFIDENTIAL or ATTORNEY'S EYES ONLY shall have no liability for or with respect to any pre-designation dissemination of the Material. Upon request by the initial discloser, the parties who made pre-designation disclosures shall use reasonable efforts to identify recipients of such Materials and to have any recipients of such Materials not authorized to receive the same pursuant to Paragraphs 4 or 5 of this Order return such Materials to counsel.

13. The restrictions set forth in this Order shall not apply to information acquired on a

non-confidential basis by the receiving party from a third party having the right to publicly disclose such information or material, or which becomes publicly known after the date of its transmission to the receiving party, provided that such information does not become known by any act or omissions of the receiving party, its employees or agents, which would be in violation of this Order. This Order also shall not apply to any information that: (a) is available to the public, other than through a breach of this protective order or other duty of confidentiality; or (b) a receiving party can demonstrate was already known to that party prior to the time of disclosure and was not subject to conditions of confidentiality.

14. If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information. A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15. A party who receives a subpoena or other request for production or disclosure of CONFIDENTIAL or ATTORNEY'S EYES ONLY Material from any third party shall not disclose any Material in response thereto without first providing written notice to the designating party. The designating party shall have ten (10) business days to take such action as it deems appropriate to protect the confidential status of the Material, including filing any necessary motions. If the designating party files a motion for a protective order, the receiving party shall make no disclosure while the motion is pending.

16. Promptly upon the conclusion of this litigation and any appeals therefrom, copies of all confidential material (those materials designated as "CONFIDENTIAL" and/or "ATTORNEYS' EYES ONLY") supplied by any party or non-party shall be returned to the producing party or destroyed. However, counsel may retain copies of briefs and other papers filed with the Board, and one set of exhibits marked at depositions, trials or hearings, which contain or constitute confidential material. The parties, through counsel, shall confirm that all confidential material that has not been returned to the producing party has been destroyed. The inadvertent production of any Material during discovery in this Action shall be without prejudice to any claim that such material is privileged or protected from discovery as work product within the meaning of Rule 26 of the Federal Rules of Civil Procedure and no party shall be held to have waived any rights by such inadvertent production. Any Material so produced and subject to a claim of privilege or a claim of work product subsequently made shall immediately be returned to the Producing Party and/or expunged and in either event such material shall not be introduced into evidence in this proceeding or any other proceeding by any person without the consent of the producing party or by Order of the Board.

17. The production of materials designated as CONFIDENTIAL or ATTORNEY'S EYES ONLY pursuant to this Order shall in no way constitute (a) a waiver of any right to object to the production or use of the same materials on other grounds; or (b) a general or limited waiver of the attorney-client, joint defense, work product or other privilege or legal protection. By signing this Order, a party is not deemed to waive any objection to the production of any material. In addition, the election by any party to disclose any portion of its confidential material to others shall itself not be deemed a waiver of any of the rights established by this Order.

18. Entering into this Protective Order, producing or receiving documents,

information or materials designated under this protective order, not objecting to any designation under this protective order, or otherwise complying with the terms of this Protective Order shall not:

- a. operate as an admission by any party that any particular document, information or material designated under this protective order contains or reflects trade secrets, proprietary or commercially sensitive information, or any other type of confidential information;
- b. waive or prejudice in any way the rights of any party to object to the production of documents, information or materials they consider not subject to discovery or to seek discovery regarding any documents, information or materials subject to this protective order;
- c. waive or prejudice in any way the rights of any party to object to the authenticity or admissibility into evidence of any document, information, materials, testimony or other evidence that is subject to this protective order;
- d. waive or prejudice in any way the rights of any party to seek a determination by the Board whether any document, information or material should be subject to the terms of this Order;
- e. waive or prejudice in any way the rights of any party to petition the Board for a further protective order relating to any purportedly confidential information;
- f. waive or prejudice in any way the rights of any party to comment on this Action, so long as such comment does not reveal or disclose any document, information or materials in violation of this protective order.

19. This Order has no effect upon, and shall not apply to, a party's use of its own Materials for any purpose.

20. Nothing contained herein shall preclude any attorney from advising his or her client concerning the merits of the action so long as CONFIDENTIAL or ATTORNEY'S EYES ONLY Material of the other party is not disclosed.

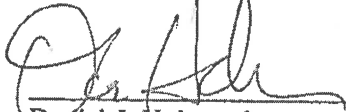
21. By entering this Order and limiting the disclosure of information in this case, the Board does not intend to preclude another judicial forum from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's CONFIDENTIAL or ATTORNEY'S EYES ONLY Material pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

22. Any non-party to this Action who shall make discovery or provide deposition or other testimony in this Action pursuant to subpoena or by agreement shall be entitled to avail itself of the provisions and protection of this Order.

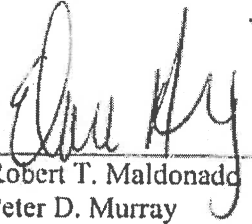
23. Upon execution hereof, the parties agree to be bound to the terms herein, and even before this Order is approved by the Board, it shall be effective as if approved.

24. This Stipulated Protective Order shall remain in full force and effect after the termination of this litigation, or until cancelled or otherwise modified by Order of this Board.

STIPULATED AND AGREED TO BY:



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*Counsel for the Opposer,
Tristar Products, Inc.*

*Counsel for the Applicant,
Telebrands Corp.*

It is SO ORDERED this _____ day of December, 2015,

EXHIBIT A
CONFIDENTIALITY AGREEMENT

1. My name is _____.
2. I work at _____, and my title is _____.
3. I have been retained by _____ as an expert witness/consultant for the purpose of this proceeding (if applicable).
4. I have read the terms of the Stipulated Protective Order in *Tristar Products, Inc. v. Telebrands Corp*, Opposition No. 91219077, pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board (the "Stipulation"), and agree to be bound by its terms with respect to any documents, material or information designated as "Confidential" and/or "Attorney's Only" (collectively, "Confidential Material") that are furnished to me as set forth in the Stipulation.
5. I hereby agree that any documents, materials, or information designated as Confidential Material and furnished to me will be used by me only for the purposes permitted by the Stipulation and for no other purpose, including any business, commercial, professional, educational, personal or any other purpose whatsoever, and will not be imparted or disclosed by me to any other person except to the extent permitted under the Stipulation.
6. I further agree to return any and all documents, materials or information designated as Confidential Material together with all copies I may have made thereof (including any notes, memos or the like I may have made which contain or reflect any such Confidential Material) to the attorney(s) that furnished me with any such documents, materials or information (a) at the conclusion of the Action (as defined in the Stipulation), or (b) at the conclusion of my

engagement in connection with the Action, or (c) at the request of the attorney(s) who furnished me with such "Confidential" documents, materials or information.

7. I hereby consent to the jurisdiction of the United States Patent and Trademark Office before the Trademark Trial and Appeal Board with regard to any proceedings to enforce the terms of the Stipulation.

Name:
Date: